



February 5, 1999

Mr. Alberto J. Pena
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR99-0347

Dear Mr. Pena:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121905.

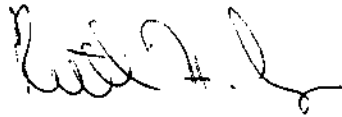
The City of San Antonio Department of Housing and Community Development (the "city") received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103 of the Government Code.¹ To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is or may be a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

¹You also state that the city possesses information that is responsive only to items 1, 14, 15, and possibly 16 in the request. See Open Records Decision No. 445 (1986) (Open Records Act does not require governmental body to obtain information not in its possession or to prepare new information in response to request). You have submitted information responsive to these requests to this office for review.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 121905

Enclosures: Submitted documents

cc: Mr. Lino Mendiola
307 Bedford Street
Lexington, Massachusetts 02420
(w/o enclosures)